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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF ILEC UNBUNDLING
OBLIGATIONS AS A RESULT OF THE
FEDERAL TRIENNIAL REVIEW ORDER

DOCKET NO. T-00000A-03-0369

COMMENTS OF THE ARIZONA
LOCAL EXCHANGE CARRIERS
ASSOCIATION

The Arizona Local Exchange Carriers Association ("ALECA") is an Arizona non-profit corporation whose members include many of the incumbent local exchange carriers ("ILECs") providing telecommunications services in rural Arizona.¹ ALECA, on behalf of its members, hereby submits these initial comments in response to the Administrative Law Judge's Procedural Order dated June 24, 2003, in this proceeding.

On August 21, 2003, the Federal Communications Commission ("FCC") issued its Triennial Review Order, and ALECA has not had sufficient time to fully consider the myriad of issues and implications of the 500+ page order. Thus, ALECA provides these initial comments, but reserves the right to file supplemental comments and to respond to any comments filed by competitive local exchange carriers ("CLECs") in this proceeding. However, neither ALECA nor its members anticipate being primary parties to any 90-day proceeding, as the burden of requesting and proving the appropriateness of a waiver of the FCC's finding of "no impairment" should rest squarely on the shoulders of a CLEC seeking such a waiver. ALECA will likely comment more extensively in the nine-month proceeding.

¹ ALECA filed a motion to intervene in this docket on Monday, September 8, 2003.

INTRODUCTION

In its Triennial Review Order, the FCC concluded that *“there are few barriers to deploying competitive switches to serve customers in the enterprise market at the DS1 capacity and above, and thus no operational or economic impairment on a national basis. Consequently, we establish a national finding that competitors are not impaired with respect to DS1 enterprise customers that are served using loops at the DS1 capacity and above (emphasis added).”*² The FCC defined DS1 enterprise customers as those customers for which it is economically feasible for a competitive carrier to provide voice service with its own switch using a DS1 or above loop.³ With respect to DS1 enterprise customers, the FCC permitted state commissions “to rebut the national finding of no impairment by undertaking a more granular analysis utilizing the economic and operational criteria contained herein. State commissions will have 90 days from the effective date of this Order to petition the [FCC] to waive the finding of no impairment.”⁴ The Triennial Review Order is effective October 2, 2003.

1. **The Arizona Corporation Commission Need Not Institute a 90-day Proceeding Absent a Request from a CLEC--the Burden of Initiating the 90-Day Process Should Rest on CLECs.**

The Arizona Corporation Commission is not required under the Triennial Review Order to file a waiver request or to institute a “90-day proceeding.” Rather, proceeding with a waiver request is within the discretion of the Commission, and at this point, it is not clear that any such request will be required since some CLECs have already conceded that there is no impairment for unbundled switching used to provide service to business customers being served by high

² Triennial Review Order at ¶ 451.

³ Triennial Review Order at footnote 1376. The FCC determined that “all customer that are served by a competing carrier using a DS1 or above loop,” and all customers meeting the DSO cutoff described in the Order (more than four lines under existing standards) qualified as enterprise customers.

⁴ Triennial Review Order at ¶ 455; see also Rule 319(d)(3)(i) (referring to a “state commission wishing to rebut the [FCC’s nationwide non-impairment] finding”).

1 capacity loops.⁵ Illustrating this point, the Florida Public Service Commission recently issue a
2 “Notice of Proposed Agency Action” concluding that it would not initiate a 90-day proceeding or
3 file a waiver request with the FCC based in part on the fact that very few DS1 loop with
4 unbundled local switching combinations were being provided in Florida.⁶ Unless a CLEC asks
5 the Arizona Corporation Commission to seek a waiver from the FCC, and the Commission
6 believes that there is potential merit in such a request, the Commission need not institute a 90-
7 day proceeding or file a waiver petition with the FCC. In short, the burden should be on a CLEC
8 to initiate the process.

9 The FCC also explained in its Triennial Review Order that “[a]fter the 90-day period,
10 states may wish, pursuant to state-determined procedures, to revisit whether competitive LECs
11 are impaired without access to unbundled local circuit switching to serve enterprise
12 customers...”⁷ Thus, the Arizona Corporation Commission will have a subsequent opportunity
13 to revisit the issue and seek a waiver of the FCC’s finding of non-impairment for high
14 capacity/switching combinations.

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16
17 ⁵ See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 01-
18 338, Reply Comments of AT&T (filed with the FCC on July 17, 2002), at 19 (“[T]here is only a single class of
19 customers that CLECs can economically serve without reliance on unbundled switching: customer locations that are
20 served by DS-1 and higher capacity loops . . .”).

21 ⁶ The Florida Public Service Commission explained:

22 As suspected, very few DS1 loop with ULS [Unbundled Local Switching] combinations are being
23 provided in Florida.... Based on the very limited demand that exists for the combination of DS1 loops
24 with unbundled local switching, we believe that CLECs are not impaired absent access to unbundled
25 local switching for business customers served via high-capacity loops, as presumed by the FCC.
26 Accordingly, we shall not initiate a proceeding to investigate whether to challenge the FCC’s
presumption. Thus, no further actions on this matter are necessary.

Docket No. 030850-TP, “Notice of Proposed Agency Action Order Finding That No Further Actions Are Necessary
to Challenge the FCC’s Presumption of No Impairment” (Order No. PSC-03-0988-PAA-TP) (Fla. PSC September 3,
2003), at 2.

⁷ *Triennial Review Order* at ¶ 455. The FCC has explained that “where we have found no impairment, states may
alter that determination only be petitioning this Commission. *Id.* at fn 1394.

1 2. **If the Arizona Corporation Commission Does Institute a 90-day Proceeding,**
2 **Any Waiver of the Finding of No Impairment Should be Evaluated and**
3 **Granted on a Case-by-Case Basis.**

4 In its Triennial Review Order, the FCC makes clear that decisions regarding impairment
5 should be made with “granularity,” weighing the circumstances of each particular market or
6 case. Because relatively few loop/transport routes and locations are likely to be at issue, the
7 Arizona Corporation Commission’s impairment analysis with respect to DS-1 loop/switching
8 combinations should be limited to the specific circumstances identified by a CLEC seeking to
9 prove competitive impairment.

10 The Arizona Corporation Commission should require that any CLEC wishing to
11 challenge the presumption of no impairment file a petition with the Commission to initiate a
12 proceeding by October 2, 2003. Any competitive carrier that intends to make such a request
13 should be required to identify the specific routes or locations of the high capacity loop/switching
14 service and to provide additional factual information sufficient to support a finding of
15 competitive impairment.

16 In addition, only the carriers impacted by the waiver request (*i.e.*, the requesting CLEC
17 seeking to establish impairment and the impacted ILEC) need to be involved in the proceeding.
18 To the extent there are multiple CLEC requests associated with a specific ILEC, those requests
19 could be considered in one proceeding applicable to that ILEC. However, the Arizona
20 Corporation Commission should not attempt to undertake the rigorous and fact specific analysis
21 for multiple ILECs or regions of the state in one generic proceeding. Such analyses should be
22 conducted on geographically limited bases, such as by study area. The Commission clearly has
23 the discretion under the Triennial Review Order to define the relevant market.

24 3. **The Burden of Rebutting the Finding of No Impairment Rests Upon the**
25 **CLEC Seeking a Waiver of the Finding.**

26 In the Triennial Review Order, the FCC found that “[t]he record demonstrates that
competitive LECs are competing successfully in the provision of switched services, using a

1 collocation network with associated backhaul transport, to medium and large enterprise
2 customers without unbundled local circuit switching.”⁸ If the Arizona Corporation Commission
3 proceeds with a request for waiver to the FCC, the Triennial Review Order lists two types of
4 criteria—operational and economic—that state commissions must address to refute the finding.⁹

5 In order to rebut the FCC’s finding of no impairment as it relates to operational barriers,
6 the Arizona Corporation Commission must consider whether ILEC performance in provisioning
7 loops, difficulties in obtaining collocation space due to lack of space or delays in provisioning by
8 the ILEC, or difficulties in obtaining cross-connects in an ILEC’s wire center make entry
9 uneconomic for CLECs.¹⁰ Thus, in order to conclude that there is impairment, the Commission
10 must find that these factors identified by the FCC are barring CLECs from market entry and that
11 allowing the continuation of unbundled switching with high capacity loops will overcome this
12 impairment.

13 To rebut the FCC’s finding that CLECs are not impaired by the lack of access to
14 unbundled local circuit switching, the Arizona Corporation Commission must find that entry into
15 a particular market is uneconomic in the absence of unbundled local circuit switching.
16 Specifically, the Commission must weigh a CLECs potential revenues against the cost of entry
17 into the market. The FCC explained:

18 [T]he revenue opportunities associated with serving DS1 enterprise customers
19 generally are sufficient to justify the sunk and fixed costs associated with using and
20 installing the switch. DS1 enterprise customers are typically medium or large
21 business customers with high demand for a variety of sophisticated
22 telecommunications services that use loops with DS1 capacity and above. DS1
23 enterprise customers purchase extensive local services, resulting in significant
24 revenues to the service provider, allowing a greater opportunity for the competitive
LEC to recover any non-recurring costs associated with the “set-up” of the loop and
switch facilities necessary to provide services. DS1 enterprise customers are more
receptive to entering into long-term contracts, which likewise gives competing
carriers a greater ability to recover non-recurring costs. Moreover, because large
business customers generate comparably greater revenues than residential
customers, requesting carriers are more willing to tolerate any provisioning

25 ⁸ *Triennial Review Order* at ¶ 453.

26 ⁹ *Triennial Review Order* at ¶ 455.

¹⁰ *Triennial Review Order* at ¶ 456.

difficulties that may be present in the installation process (footnotes omitted).¹¹

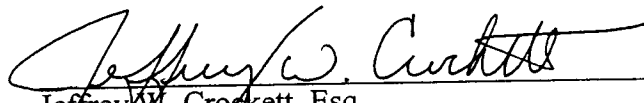
The Triennial Review Order specifies that state commissions should consider all likely revenues to be gained by the CLEC, including revenues from local exchange and data services.¹² The FCC concludes that where competitive LECs have the opportunity to earn revenues that outweigh the costs associated with entry, there is no impairment.¹³

CONCLUSION

It is clear from the Triennial Review Order that the FCC believes there are few barriers to deploying competitive switches to serve enterprise customers with DS1 level capacity or greater. The FCC has found that competition will not be impaired on a national basis if CLECs cannot purchase DS1 loops and switching from ILECs. ALECA submits that the Arizona Corporation Commission need not undertake a 90-day proceeding absent a credible request by a CLEC. If the Commission does initiate a 90-day proceeding, the Commission must perform a "granular" impairment analyses based on the particular circumstances that exist before it makes an affirmative finding of impairment. And, such a finding must be based upon a showing that specific carriers providing service at the DS1 capacity and above should be entitled to unbundled access to local circuit switching in a particular market or location. Finally, the burden of refuting the presumption of non-impairment rests upon the CLEC requesting a waiver of the finding.

RESPECTFULLY submitted this 10th day of September, 2003.

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¹¹ Triennial Review Order at ¶ 452.

¹² Triennial Review Order at ¶ 457.

¹³ Triennial Review Order at ¶ 458.

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